File No. 244

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Collection No.

Mysore Residency

Bangalore.

27/6/47

Pros. Serial Nos. 1-5

S. N. 254 destroyed 6/4/48

Subject.

Incometax Review Petition(No.5 of 1933-34) Mr. Saleh Ahmed Sait Infantry Road, Civil and Military Station, Bangalore.

Previous References.	Later References.

S. 97.—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

(3)

The assessee in this case is Mr. Saleh Ahmed Sait, Furniture Merchant, Infantry Road. His residence as well as place of business are both in the Civil and Military Station. He owns properties outside the Station - in Bangalore City and Madras. The rents in respect of these properties are not received by him directly in the Civil and Military Station, but are paid by the tenants themselves or by the assessee's bill-collectors into his account in banks at Bangalore City and Madras and are subsequently drawn by him into the Station. The question is whether the amounts so drawn into the Station during the year of account are chargeable to income-tax in the Civil and Military Station.

(4)

Section 4 of the Act, which is the charging section, was amended recently (i.e., with effect from 1-4-1933) by Act XII of 1933. The assessment in this case was made on 6-8-1933 and it is therefore the unamended section that should be applied. A typed copy of this section is at slip L. For the sake of convenience, the words "Civil and Military Station" have been typed wherever the words "British India" occur in the printed Act.

(5)

Under section 4(1), tax is payable on all income arising or accruing in the Civil and Military Station, whether the recipient resides in the Station or not. Tax is also payable in respect of income received in the Civil and Military Station irrespective of whether it accrued or arose within or without the Station. Tax is also payable in respect of income which is "deemed under the provisions of this Act to accrue or arise or to be received in the Civil and Military Station". The particular cases where income is "deemed under the Act, to

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accrue or arise or to be received in the Civil and Military Station" are specified in sections 4(2), 7(2), 11(3) and 42. In the present case, we are dealing with an income which accrued or arose outside the Station but is alleged to have been <u>received</u> in the Station by the assessee.

(6)

Now, income accruing or arising outside the Station can be received in the Station either as and when it accrues or arises or it can be allowed to accumulate outside and received in the Station at intervals. If it is received in the year in which it accrues or arises, it is clearly liable to tax under section 4(1). But if it is received some time after, tax can be evaded by claiming that it is not <u>income</u> but accumulated profits or savings or <u>capital</u>. Section 4(2) was therefore inserted in the present Act to prevent tax being evaded on the ground that what was received was capital and not income. This sub-section expressly provides that foreign income, even if received after the end of the year in which it accrued or arose, shall be charged to income-tax in the year of receipt. There are, however, two important restrictions in its application: (i) only income from <u>business</u> is liable to be charged under this sub-section and (ii) it should be ~~was to be only~~ received within <u>three years</u> of the end of the year in which it accrued or arose.

(L)

(7)

There was of course no logical ground for not treating other classes of foreign income of a resident in British India or C&H Station (for example, income from investments abroad) on the same footing as income from business, nor was there any valid reason why foreign income should not be liable to tax <u>whenever</u> it was received in British India or C&H Station. Section 4(2) was accordingly amended recently

(M)

recently (by Act XII of 1933) so as to render all foreign income of a resident in British India from whatever source derived, liable to tax in British India, whenever it was received in British India. A copy of the amended section is at slip L/1.

(8)

It will thus be seen that the object of the original section 4(2) and its subsequent amendment was to stop the attempt of assessees to claim as capital what was really income, by bringing in income after the lapse of one year: there would be no difficulty if received within one year. In other words, section 4(2) would have been quite unnecessary if we had to deal with only incomes received in the year in which they accrued or arose, because such receipts cannot obviously be claimed to be of the nature of capital receipts and would therefore be taxable under section 4(1). In the present case, we are concerned with income alleged to have been received in the Station in the year of its accrual and the proper section to be applied therefore is section 4(1). In any case, section 4(2) cannot apply because we are not dealing with business income to which alone that section applies. Grounds (2) and (3) of the Review petition do not therefore appear to be relevant to the present issue. What actually we have to decide is whether the income in question can be charged to tax under section 4(1).

(9)

Under this section - section 4(1) - all income received in the Civil and Military Station is chargeable to tax in the Station. The two essential conditions are (1) the amount sought to be taxed must be income (and no capital) and (2) it must have been received in the Station.

(10)

Point (1): Income or Capital. Please see pages

3—5

3 - 5 of the I.T.O's note to the Assistant Commissioner this point and also the latter's order dismissing the assessee's appeal. Temporary deposit in a bank outside or any other similar device cannot possibly convert "income" into "capital" in the ordinary sense of the words. As remarked by the I.T.O., it is absurd to suggest that if rent from City is brought into the Station by the tenant or the postman and paid to the assessee, the receipt is "income" but, if it is paid to the assessee or his bankers in City and brought into Cantonment, it is "capital". The assessee's point is that the same income cannot be received twice over by the same person: the receipt on the second occasion must be presumed to be "capital". This cannot be accepted. "Income" does not become "capital" simply because it is nominally first received outside. The amount sought to be taxed must, in the circumstances, be regarded as "income" and not as "capital".

The second point is whether the amount in question was "received" within the meaning of section 4(1). The I.T.O.'s detailed note on this point and the Assistant Commissioner's order may kindly be perused. The question simply is this: does "received in" in Section 4(1) include "brought into" also? Both the I.T.O. and the Assistant Commissioner - and even the assessee - seem to think that the fundamental point at issue in the case is whether what was received was "income" or "capital". If it was "income", the I.T.O. argues, it was "received", however it reached the assessee in the Station. Please see page 5 of the I.T.O's note — "Whenever money came into the assessee's hands it was received; the only point was whether what was received was capital or income". According to the I.T.O., the distinction between "received in" and "brought into" has been drawn only in section 4(2). He thinks that it will be wrong to draw such a distinction as far as section 4(1) is

4(1) is concerned, because, that section applies to all income of an assessee and the nature of the channels through which the income reaches him cannot possibly alter the fact of the receipt. The High Court of Patna has, however, taken an entirely different view in Sir Saiyid Ali Imam Vs. The Crown, in which one of the point for determination was exactly the same as that in the present case, viz., the correct meaning which should be given to the word "received" in section 4(1) of the Act. The judgment in the case (the more important portions have been side-lined in red) may kindly be read. According to this decision, the question whether the amount sought to be taxed was income or capital is not at all relevant to the interpretation of "received" in section 4(1): money, which is admittedly income, may reach an assessee from outside without his "receiving" it within the meaning of section4(1). The receipt of the income referred to in section 4(1), it has been held, must refer to the first receipt, i.e., the first occasion upon which the recipient got the money under his own control. In the present case, the fact that the assessee first got the money under his own control outside the Station, i.e., in Bangalore City and Madras, has not been disputed. The income in question was therefore not "received" in the Station within the meaning of Section 4(1) and is therefore not taxable.

It may be that if the above interpretation of "received" in section 4(1) is allowed to prevail, an assessee can very easily evade tax by going across to City and bringing the money with him or by temporarily keeping the money outside and drawing on it. But such considerations should not, it is submitted, be allowed to influence a just construction of the provisions of a taxing statute. If the law allows means of evading tax

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the proper procedure is obviously to rectify it. The law on the subject has since been actually amended so as to make incomes "brought into" also liable to tax, but the amended provision cannot be applied to the present case as it came into force only after the assessment was made.

It may be mentioned that the assessee had brought the decision of the Patna High Court to the notice of the Assistant Commissioner before he had passed orders on the appeal. Presumably, the Assistant Commissioner did not agree with the view taken by the High Court. His order is silent on the point. The judgment is dated 3-11-24, but it is the latest authoritative decision on the point at issue and does not appear to have been challenged so far and we are therefore bound to give due consideration to it. If, for any reason, it is considered that the decision is not sound in law, the matter may, it is submitted, be referred to the Board and their orders obtained. In view of the subsequent amendment of the law on the subject, the question has, however, lost all its importance and is not likely to be raised again.

Another point urged by the petitioner is that the income in question arises outside the Station and is therefore not assessable in the Station under section 12 of the Act. This does not appear to be correct. Please see in this connection page 5 of the I.T.O's note and the portion marked 'A' of the Privy Council judgment at slip 'R'.

If the Commissioner wishes to hear the petitioners before orders are passed, a date for hearing may kindly be fixed. (Two income-tax cases have already been posted for hearing on the 16th November).

6-11-33

Hearing on 12/12/33

Commissioner.

(11) Para 16 ante.

Draft submitted, with fair, for signature.

Mayan
9.11.33

(From para 16)

Commr.

Gr 10/11

10/11

S.N.A. (Collr. Chittagong p.u.c)

Issued No.10493, dated the 11th November 1933.

(18) Please see from paragraph 3 ante. The hearing of this case has been fixed at 11 a.m. on Tuesday the 12th December 1933.

(Para 18 only)

Mayan
11.12.33

Commissioner.

(19) Counsel heard on the 12th. Le and. follow the Patna Ruling. Please draft accordingly.

Gr 11/12

(K)

(20) A draft order is submitted for approval.

Mayan
27/12/33

(From para 19)

Commr.

(21) With your permission I will discuss this case with the C.C. 4/1

you agree I should be grateful if you would ask him to bring the bill to me at 11 am on 3/1.34

Asst. Comm (T) Encl 30/1.2

W/O

The draft order, as amended by Secretary, has been faired and is submitted for signature.

[signature]
4-1-34

(From Indian)

Comptr.

[signature]

S.N.5

Issued No. 134 dt. 5.1.34.

TO.

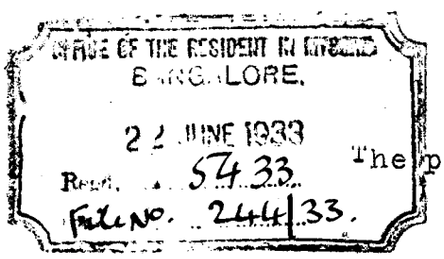
THE COMMISSIONER OF INCOME-TAX.

Civil and Military Station.

Bangalore.

I. T. Review Petition No. 5 of 1933-34

PETITION UNDER SECTION 33 OF THE INDIAN INCOME TAX ACT.



Dated day of June 1933.

The petition of Saleh Ahmed Sait, C & M Station, Bangalore.

The petitioner abovenamed begs to state as follows :-

A

1. That your petitioner has been assessed for the year 1932-33 on a sum of Rs.10, 260/- and he has been called to pay a sum of Rs.810/9/-

2. That in computing the Income, The Income Tax Officer has assessed the petitioner on the Income from properties situated at Madras and Bangalore City amounting to Rs.2,700/-

3. This Income is not assessable as it neither accrues nor arises nor is received into the C & M Station nor can it be deemed to accrue, arise or received in the C & M Station.

4. The rents due from the properties are paid by the tenants into the banks at Bangalore City and Madras and they are brought into the station only if and when required.

5. On the order of the Income Tax Officer, your petitioner filed an appeal before the Assistant Commissioner of Income Tax and the order thereon dated 22nd May 1933 rejecting the petition is herewith filed.

B

C

6. Your petitioner begs to state that the said order is against Law on the following grounds :-

1) That it has been held that Income cannot be received twice over by the same person as Income once outside British India and again British India, the receipt on the second occasion must be presumed to be of capital and not of Income. (Ref. Sir Ali Imams Case. Indian Tax Case 402).

2) That under Section 4 Clause 2 no other Income except gains and profits of a business accruing or arising without C & M Station to a person residing in C & M Station shall be deemed to be Income.

3) That the fact that no other Income accruing or arising outside C & M Station even if brought into C & M Station can be taxed is made clear by Act XII of 1933 published in Gazette of India of 22-4-33 which excludes all such Income.

4) That Section 12 under which the Income Tax officer has taxed the petitioner does not apply to Income arising outside British India or C & M Station.

Under the above circumstances the petitioner prays that this Hon'ble Court may be pleased to call for the records in this case and pass an order disallowing Income of Rs 2,700 from the taxable Income.

Saleh Ahmed Sait.

I, Saleh Ahmed Sait the petitioner abovenamed do hereby declare that what is stated is true to the best of my information and belief.

Saleh Ahmed Sait.

Bangalore
Dated 21/6/33

Before the Commissioner of
~~In the Court of the~~ Income Tax
6 & 10 Sh~. BANGALORE.

No. of 193

~~Plaintiff~~ Vs ~~Defendant~~

I/We the petitioner abovenamed
do hereby appoint and retain MR. J. L. D'SILVA, B.A. B.L. ~~and MR. P. A. NAZARETH, B. A., M. L.~~ to appear for ME/US in the above case and **to conduct and prosecute (or defend)**. the same and all proceedings that may be taken in respect of any application for execution of any degree or order passed therein. I/WE empower MY/OUR Advocates to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents an draw any moneys that might be payable to ME/US in the said suit or matter.

BANGALORE.
21/6/1933.

X Saleh Ahmed Sait.

Personally known to me
and Signed before me.

Accepted
Advocate for Petitioner

Accepted

Advocate for

IV.134 :
with the Assessment and appeal records

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IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,
Civil & Military Station, Bangalore.

Dated the 5th January 1934.

Before :- Major G. Kirkbride, I.A.,
Secretary to the Resident and
Commissioner of Income-tax.

Income-tax Review Petition No.5/1933-34.

Petitioner :- Mr. Saleh Ahmed Sait,
Infantry Road, Bangalore.

O R D E R.

The assessee in this case owns properties in Bangalore City and Madras. The rents of these properties are not received by him directly in the Civil and Military Station, Bangalore - where he resides and has his place of business - but are paid by the tenants or by the assessee's bill-collectors into his account in banks at Bangalore City and Madras and are subsequently withdrawn by him into the Civil and Military Station. The question for determination is whether the amounts so withdrawn into the Station during the year of account (1931) are chargeable to income-tax in the Civil and Military Station.

2. The tax in this case has been levied under section 4(1) of the Act. In Sir Saiyid Ali Imam vs. the Crown, reported on page 210 of I.L.R. IV Patna, it has been held that the receipt of the income referred to in section 4(1) of the Income-tax Act, 1922, must refer to the first occasion upon which the recipient got the money under his own control. In the present case, the assessee first got the money under his own control outside the Civil and Military Station of Bangalore, i.e., in Bangalore City and Madras. It might be argued therefore that the income in question was not received in the Civil and Military Station within the meaning of section 4(1) of the Act and is therefore not taxable. But it seems to me to be a very easy way of escaping the tax if advantage is to be taken

of

of this ruling. That the matter is not free from doubt or difficulty would seem to be indicated by the amendment to section 4(2) which came into force on the 1st of April 1933. By this amendment all income, profits and gains, whether from a business or not, are liable to the tax and had this amendment come into force earlier the assessee would certainly have been liable. This has been conceded by Counsel for the petitioner in the course of these proceedings. From this amendment it might perhaps be argued that the Government of India themselves felt that the Act as it stood prior to the amendment did not permit the assessment of income in cases such as this. I therefore give the petitioner the benefit of this doubt and order the assessment to be revised accordingly.

Major,
COMMISSIONER OF INCOME-TAX.

To the Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore, with the
assessment and appeal records returned.

The assessee through his Counsel Mr.J.L.D'Silva. B.A., B.L.,
Advocate, Lady Curzon Road, Bangalore.

ASB/4.1.34.